

Metal Sales Manufacturing and Loren A. Dunbar, Sr., Petitioner and International Association of Machinists District Lodge 751, Local Lodge 86, AFL-CIO, Union. Case 19-RD-3074

March 5, 1993

DECISION ON REVIEW AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

On December 8, 1992, the Regional Director for Region 19 administratively dismissed the instant decertification petition on the basis that the signatures constituting the showing of interest submitted with the petition were undated; that the showing of interest was, therefore, defective; and that the window period for timely filing a petition had expired before the defect could be corrected. The Petitioner filed a timely request for review of the dismissal.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has duly considered this matter and has decided to reverse the Regional Director's administrative dismissal, to reinstate the petition, and to remand to the Regional Director for further processing.

The collective-bargaining agreement between the Employer and the Union was, by its terms, effective from February 1, 1992, "until" January 31, 1993. The open period for filing a petition, therefore, was from November 2 through December 1, 1992.¹ On December 1, 1992, the last day of the open period, the Petitioner filed the instant petition, accompanied by a showing of interest consisting of an undated list of signatures. On December 4, 1992, the Regional Office informed the Petitioner that the petition was defective in that there were no dates with the signatures, and that it was too late to correct this defect. By letter dated December 8, 1992, the Regional Director administratively dismissed the petition for these reasons. The following day the Petitioner sent, and the Regional Office received, an affidavit from the Petitioner attesting that he had collected all signatures on the showing of interest on November 30, 1992. The Region rejected the affidavit, relying on the NLRB Casehandling Manual

(Part Two) Representation Proceedings (CHM), section 11028.5, which provides that only signatures that are dated may be counted toward the requisite showing of interest, and that "[n]o independent proof of the date of signing should be solicited or accepted."

This case is governed by *Dart Container Corp.*, 294 NLRB 798 (1989), in which the Board considered the extent to which the date of a showing of interest may be supplied by affidavit. The Board noted the tension between CHM section 11028.5 and prior case law permitting reliance on affidavits. Reversing the Regional Director's dismissal of the petition, the Board held that where a petitioner submits a list of signatures as a showing of interest in a timely fashion, but omits the signature dates, the Board's requirement that the showing of interest be "dated" may be met by affidavit, "either submitted as part of the showing of interest itself or timely filed thereafter" *Dart Container*, 294 NLRB at 798. The Board explained that the date of filing of the petition and the date of submission of the showing of interest are more critical in representation cases than the precise date of signing of the showing of interest, and that the Board has, on occasion, adopted a liberal interpretation that the showing of interest be "dated." *Id.* at 798-799. Further, the Board observed, to the extent that the precise date of signing is critical, an affidavit could be even more reliable than a dated signature. *Id.* at 799. The Board stated that CHM section 11028.5 should be revised accordingly.²

Thus, the Petitioner's submission of an affidavit attesting to the date of the signatures on the timely filed showing of interest meets the Board's requirement that the signatures be dated, if the affidavit itself is timely. In determining what constitutes timeliness under *Dart Container*, we have considered that the absence of signature dates is only a technical defect. Although we require that failure to provide a numerically sufficient showing of interest be cured no later than the last day on which a petition might be timely filed,³ we do not believe such a strict limitation is necessary in permitting a party to cure a technical defect in the dating of the signatures. Rather, we conclude that the timeliness requirement of *Dart Container* for the filing of an affidavit is satisfied if the affidavit is filed within a reasonable time after the timely filed signature list (or authorization cards), without regard to whether the affidavit itself is filed during the insulated period preceding the extant contract's expiration.

¹ The Board's contract-bar rules require that, in order to be found timely, election petitions be filed prior to the "insulated" period—60 days preceding the extant contract's expiration—in order to afford the parties to an expiring contract the opportunity to negotiate and execute a new or amended agreement without the disrupting effect of rival petitions. *Deluxe Metal Furniture Co.*, 121 NLRB 995 (1958). In applying this rule, it is settled that a collective-bargaining agreement effective "to" or "until" a certain date does not include that date, and that such an agreement's last effective date is the preceding day, unless there is evidence of the parties' intent to the contrary. See *Hemisphere Steel Products*, 131 NLRB 56 (1961); *Williams Laundry Co.*, 97 NLRB 995 (1952).

² Apparently through oversight, CHM sec. 11028.5 has not yet been revised. As provided in its introductory statement of purpose, the CHM was prepared by the General Counsel to provide procedural and operational guidance to Agency employees, and its provisions are not Board rulings or directives, or binding procedural rules. Nevertheless, we have taken steps to have this oversight corrected.

³ See Sec. 101.17 of the Board's Statements of Procedure.

In the instant case, the Petitioner submitted an affidavit attesting to the date of the signatures only 8 days (6 working days) after submitting the timely showing of interest, and 5 days (3 working days) after the Regional Office orally informed the Petitioner that the showing of interest was defective for lack of dates. We hold that this is a reasonable time after the Petitioner's filing of the signature list within which to file an affi-

davit, even though the affidavit was filed during the insulated period.

ORDER

The Regional Director's administrative dismissal of the instant petition is reversed, the petition is reinstated, and the case is remanded to the Regional Director for further processing.